



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

January 21, 2012

Ms. Olga Dominguez
Assistant Administrator, Office of Strategic Infrastructure
NASA Headquarters (Suite 4F80)
300 E Street SW
Washington DC 21546

Dear Ms. Dominguez,

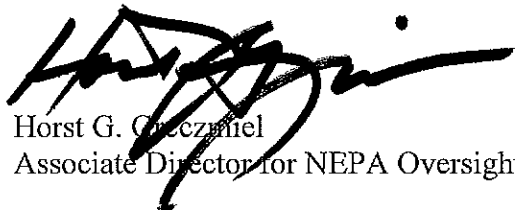
Thank you for consulting with the Council on Environmental Quality (CEQ) on the National Aeronautics and Space Administration (NASA) revisions to its National Environmental Policy Act (NEPA) regulations. The CEQ regulations provide that agencies review their NEPA policies and procedures and, in consultation with CEQ, revise them as necessary to ensure full compliance with the purposes and provisions of NEPA (40 C.F.R. § 1507.3).

The consultation with CEQ on the proposed changes to the regulations implementing NEPA (attached) took into consideration inter-agency comments, and the revisions made in response to those comments. Specifically with regard to the new and revised categorical exclusions, NASA considered the potential environmental impacts of the activities covered by the new and revised categorical exclusions and determined that those new and revised categorical exclusions set forth in the attachment would not individually or cumulatively create a significant impact on the environment and therefore would not require additional NEPA analysis and documentation unless extraordinary circumstances exist (40 C.F.R. § 1508.4).

Based on this consultation, CEQ concludes that the revision (attached) is in conformance with NEPA and the CEQ regulations. The amendment will take effect once it is published in final form in the Federal Register.

Thank you for your responsiveness to our comments and recommendations.

Sincerely,



Horst G. Griesmeyer
Associate Director for NEPA Oversight

Attachment: Final Revision of 14 CFR 1216

**Subpart 1216.3 Procedures for Implementing the National Environmental Policy Act
(NEPA)**

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Authority: The National Aeronautics and Space Act of 1958, as amended (51 U.S.C. 20101 *et seq.*); The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500-1508).

§1216.300 Scope.

- (a) This subpart implements NEPA, setting forth NASA's policies and procedures for the early integration of environmental considerations into planning and decision making.
- (b) Through this subpart, NASA adopts the CEQ regulations implementing NEPA (40 CFR parts 1500-1508) and supplements those regulations with this subpart 1216.3, for actions proposed by NASA that are subject to NEPA requirements. This subpart is to be used in conjunction with the CEQ regulations. Consistent with the CEQ regulations at 40 CFR part 1500.3, no trivial violation of this part shall give rise to any independent cause of action. This subpart and NASA's NEPA policy are available on NASA's Public Portal at <http://www.nasa.gov/agency/nepa/> (under *NEPA Process*).

§1216.301 Applicability.

This subpart applies to all organizational elements of NASA.

§1216.302 Responsibilities.

- (a) The NASA Senior Environmental Official (SEO) (as defined in Appendix A to this subpart) is responsible for overseeing and guiding NASA's integration of NEPA into the Agency's planning and decision making. The SEO, with the assistance of the Office of the General Counsel (OGC), is responsible for developing NASA NEPA regulations and maintaining up-to-date Agency-wide NEPA guidance that fully integrates NEPA analysis

into Agency planning and decision-making processes. The SEO shall monitor this process to ensure that these regulations and the associated Agency guidance are achieving their purposes. In addition, the NASA SEO is responsible for coordinating with other Federal agencies and the CEQ and consolidating and transmitting NASA's comments on EISs and other NEPA documentation prepared by other Federal agencies:

- (1) The NASA Headquarters/Environmental Management Division (HQ/EMD) is delegated the SEO's overall responsibility of implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making for all NASA activities. The HQ/EMD provides advice and consultation to all NASA entities in implementing their assigned responsibilities under NEPA. Interested persons can obtain information on the status of EISs and other elements of the NEPA process by contacting the NASA NEPA Manager at HQ/EMD identified at <http://www.nasa.gov/agency/nepa/NEPATeam.html>.
 - (2) Each NASA Center has an environmental management office that guides and supports the working-level functions of the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising project managers.
- (b) The Responsible Official shall ensure that planning and decision making for each proposed Agency action complies with these regulations and with Agency NEPA policy and guidance provided by the SEO, HQ/EMD, and the Center's environmental management office. For facility programs and projects, the Responsible Official is the individual responsible for establishing, developing, and maintaining the institutional capabilities required for the execution of programs and projects (e.g., Center Director, facility manager). For other programs and projects, (e.g., space flight programs/projects, R&D programs/projects) the Responsible Official is the NASA official responsible for the formulation and implementation of the program or project (e.g., The Associate Administrator for Science Mission Directorate, Center Director).
- (c) NASA must comply with this subpart when considering issuance of a permit, lease, easement, or grant to a non-Federal party and may seek such non-Federal party's assistance in obtaining necessary information and completing the NEPA process. The Responsible Official(s) for such action(s), in consultation with HQ/EMD and/or the Center's environmental management office, will determine the type of environmental information needed from the non-Federal party and the extent of the non-Federal party's participation in the necessary NEPA process.

§1216.303 NEPA process in NASA planning and decision making.

- (a) NEPA requires the systematic examination of the environmental consequences of implementing a proposed Agency action. Full integration of the NEPA process with NASA project and program planning improves Agency decisions and ensures that:

- (1) Planning and decision making support NASA's strategic plan commitment to sustainability and environmental stewardship and comply with applicable environmental statutes, regulations, and policies.
- (2) The public is appropriately engaged in the decision-making process.
- (3) Procedural risks and delays are minimized.
- (b) Determining the appropriate level of NEPA review and documentation for a proposed NASA action will depend upon the scope of the action and the context and intensity of the reasonably foreseeable environmental impacts.
- (c) The environmental impacts of a proposed Agency action must be considered, along with technical, economic, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will take no action which would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of its NEPA review.

§1216.304 Categorical exclusions.

- (a) Categorical Exclusions (CatExs) are categories of Agency actions with no individually or cumulatively significant impact on the human environment and for which neither an EA nor an EIS is required. The use of a CatEx is intended to reduce paperwork, improve Government efficiency, and eliminate delays in the initiation and completion of proposed actions having no significant impact.
- (b) A proposed action may be categorically excluded if the action fits within a category of actions eligible for exclusion (such categories are listed in paragraph (d) of this section), and the proposed action does not involve any extraordinary circumstances as described in paragraph (c) of this section:
- (c) Extraordinary circumstances that will preclude the use of CatExs occur when the proposed action:
 - (1) Has a reasonable likelihood of having (individually or cumulatively) significant impacts on public health, safety, or the environment.
 - (2) Imposes uncertain or unique environmental risks.
 - (3) Is of significantly greater scope or size than is normal for this category of action.
 - (4) Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, and/or local law or requirements imposed for the protection of the environment.
 - (5) Involves impacts on the quality of the environment that are likely to be environmentally controversial.
 - (6) May adversely affect environmentally sensitive resources, such as, but not limited to, federally listed threatened or endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat,

unless the impact has been resolved through another environmental review process; e.g., the Clean Water Act (CWA), the Coastal Zone Management Act (CZMA).

- (7) May adversely affect known national natural landmarks, or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact has been resolved through another environmental review process; e.g., the National Historic Preservation Act (NHPA).

(d) Specific NASA actions meeting the criteria for being categorically excluded from the requirements for EAs and EISs are as follows:

(1) Administrative Activities including:

- (i) Personnel actions, organizational changes, and procurement of routine goods and services.
- (ii) Issuance of procedural rules, manuals, directives, and requirements.
- (iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.
- (iv) Preparation of documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.
- (v) Information-gathering exercises, such as inventories, audits, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, and routine data collection and analysis activities.
- (vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.
- (vii) Software development, data analysis, and/or testing, including computer modeling.
- (viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

(2) Operations and Management Activities including:

- (i) Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment, such as buildings, roads, grounds, utilities, communication systems, and ground support systems, such as space tracking and data systems.
- (ii) Installation or removal of equipment, including component parts, at existing Government or private facilities.

- (iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity's program, project, or activity.
 - (iv) NASA ceremonies, commemorative events, and memorial services.
 - (v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes, in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.
- (3) Research and Development (R&D) Activities including:
- (i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements and Executive orders.
 - (ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.
 - (iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.
- (4) Real and Personal Property Activities including:
- (i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.
 - (ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property, or any other real property, for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any required notices in transfer documentation and any terms and conditions necessary to ensure protection of the environment, as applicable (Record of Environmental Consideration (REC) required).
 - (iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section (REC required).
 - (iv) Transfer of real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) will complete any necessary NEPA review prior to any change in land use (REC required).

- (v) Acquisition of real property (including facilities) where the land use will not change substantially (REC required).
- (5) Aircraft and Airfield Activities including:
 - (i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.
 - (ii) Relocation of similar aircraft not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (e.g., noise), or permanent personnel or logistics support requirements at the receiving installation (REC required).
- (e) The Responsible Official shall review the proposed action in its early planning stage and will consider the scope of the action and the context and intensity of any environmental impacts to determine whether there are extraordinary circumstances that could result in environmental impacts. If extraordinary circumstances exist, the Responsible Official will either withdraw the proposed action or initiate an EA or EIS.
- (f) The NASA SEO will review the categorical exclusions at least every seven years, in accordance with CEQ guidance, to determine whether modifications, additions, or deletions are appropriate, based upon NASA's experience. Recommendations for modifications, additions, or deletions shall be submitted to the SEO for consideration and informal discussion with the CEQ.

§1216.305 Actions requiring environmental assessments.

- (a) The Responsible Official will prepare an EA when a proposed action cannot be categorically excluded, and the proposed action is not expected to result in impacts that require analysis in an EIS. The Responsible Official will consider the scope of the action and the context and intensity of any environmental impacts when determining whether to prepare an EA.
- (b) Typical NASA actions normally requiring an EA include:
 - (1) Specific spacecraft development and space flight projects/programs (as defined in Appendix A to this subpart).
 - (2) Actions altering the ongoing operations at a NASA Center which could lead directly, indirectly, or cumulatively to substantial natural or physical environmental impacts.
 - (3) Construction or modifications of facilities which are not minor.
 - (4) Proposed actions that are expected to result in significant changes to established land use.
 - (5) A space flight project/program that would return extraterrestrial samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive an Unrestricted Earth Return categorization (as defined in Appendix A to this subpart) from NASA's Planetary

Protection Office (PPO) or the NASA Planetary Protection Subcommittee prior to the return of samples to the Earth.

§1216.306 Actions normally requiring an EIS.

- (a) NASA will prepare an EIS for actions with the potential to significantly impact the quality of the human environment, including actions for which an EA analysis demonstrates that significant impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant impacts.
- (b) Typical NASA actions normally requiring an EIS include:
 - (1) Development and operation of new launch vehicles or space transportation systems.
- (c) Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (i.e., a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A to this subpart) is greater than 10)).
- (d) Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A to this subpart) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.
- (e) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.
- (f) Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

§1216.307 Programmatic EAs, and EISs, and tiering.

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow "tiering" of NEPA documentation for subsequent or specific actions.

§1216.308 Supplemental EAs and EISs.

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

§1216.309 Mitigation and monitoring.

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSIs and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

§1216.310 Classified actions.

- (a) Classification does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.
- (b) When classified information can reasonably be separated from other information and a meaningful environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

1216.311 Emergency responses.

- (a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in sections 305 and 307 of this subpart, then the following provisions apply:
 - (1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.
- (b) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.
- (c) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

Appendix A to Subpart 1206.3 -- Acronyms and Definitions

CatEx	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DoI	(U.S.) Department of the Interior
EA	Environmental Assessment
EMD	Environmental Management Division
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
FR	Federal Register
GSA	General Services Administration
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
SEO	Senior Environmental Official
OGC	Office of the General Counsel
PPO	Planetary Protection Office
REC	Record of Environmental Consideration
ROD	Record of Decision
U.S.C.	United States Code

Definitions

1. A2 Mission Multiple--The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the level of review and approval required for launch.
2. Earth Return Mission (also known as a Sample Return)--A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.
3. NASA Senior Environmental Official--The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.
4. Record of Environmental Consideration--A brief document that is used to describe a proposed action, identify the applicable categorical exclusion, and explain why further environmental analysis is not required.
5. Restricted Earth Return--A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.
6. Space Flight Projects/Programs--Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.

7. Unrestricted Earth Return--NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

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